

Public Agencies May Levy New Development Impact Fees, Despite Contract Providing Otherwise

08.01.2023

ATTORNEYS

An agreement purporting to limit a city from imposing new fees on a development is void as an infringement on the city's police power.

Nicholas R. Ghirelli

In *Discovery Builders, Inc. v. City of Oakland*, the court of appeal ruled that cities always maintain, and cannot contract away, their police power to establish and levy development impact fees on new development. In 2016, Oakland adopted new impact fees on certain types of new development, and levied fees on a large ongoing residential development project. Developers challenged those fees, relying on a 2005 agreement with the City that purported to establish all the City fees applicable to the developers' project.

The court held that Oakland, through this type of agreement, could not contract away its future right to adopt impact fees that mitigate the impacts of future development. Because levying impact fees is a reflection of Oakland's police power, a provision or interpretation of the agreement preventing the City from imposing new development impact fees is unenforceable. The court concluded that even if the 2005 agreement had somehow limited the City's future actions, it was only intended to cover specific costs and did not prohibit later imposition of impact fees.

Notably, this case did not involve the interpretation of a statutory development agreement, which can provide a contractual means of vesting certain development rights and fee amounts.

If you have any questions about how this case may affect your city, please contact **Nicholas R. Ghirelli** or your RWG attorney. This e-alert was written by Thomas M. Fogel Burlan, an RWG summer associate from USC Gould School of Law.